

HIGH COURT OF CHHATTISGARH AT BILASPUR**DIVISION BENCH**

CORAM : HON'BLE SHRI H.L. DATTU, C.J.
HON'BLE SHRI V.K. SHRIVASTAVA, J.

W.P. NO.1172 of 2001

PETITIONER

Rasid Ali Ali Siddiqui S/o late Shri Abid Ali, aged about 63 years, Retired UDC, PWD, M.P. Govt. R/o P-4, Adarsh Nagar, Durg C.G.

Versus

RESPONDENTS

1. The State of Chhattisgarh, the State of Madhya Pradesh through The Secretary, PWD Mantralaya Raipur District Raipur, C.G. 492001
2. The Engineer-in-Chief / Chief Engineer, PWD Raipur.
3. The Executive Engineer, PWD Khairagarh Division, Khairagarh, Distt. Rajnandgaon.
4. Presiding Officer / Member M.P. State Administrative Tribunal, Raipur C.G. 492001

Present : Shri Amiyakant Tiwari, counsel for the petitioner.
Shri Sumesh Bajaj, G.A. for the State / respondents.

ORAL ORDER

(Passed on 15th March, 2007)

The following oral order of the Court was passed by
H.L. Dattu, C.J.

This writ petition is filed against the order passed by the Madhya Pradesh State Administrative Tribunal, Raipur ('the Tribunal' for short) in O.A. No.410/99, dated 07.06.2001. By the impugned order the Tribunal has rejected the application filed by the applicant / petitioner for a direction to the respondents to refund the gratuity amount that was recovered from the applicant / petitioner.

(2) The brief facts are:-

The petitioner was a Government Servant employed in the Public Works Department. While he was in service, he was allotted a Government quarter. He was paying monthly rent of Rs.35/-. He was transferred from the place where he was working earlier to a different place, but he continued to occupy the allotted quarter, with the prior permission of the competent authority.

(3) Since the petitioner had overstayed in the allotted quarter though he was transferred from the place where he was working earlier, the respondents have imposed penal rentals and had directed to recover the same.

(4) After the petitioner retired from service, he had approached the Tribunal for a direction to the respondents to refund whatever that was recovered from the gratuity amount payable to him. The Tribunal has rejected the request on the ground that because of the circular instructions dated 31.01.92, the Government has the power to recover the penal rentals from the gratuity amount payable to the Government Servant.

(5) Two issues would arise in this case. First and foremost is whether the respondents could have imposed penal rentals on the petitioner on the ground that he had overstayed in the allotted Government quarter, and the second issue is whether the respondents could recover the said penal rentals from the gratuity amount payable to the applicant / petitioner.

(6) So far as first issue is concerned, it is an admitted fact that while he was in service he was allotted a Government quarter. It is also an

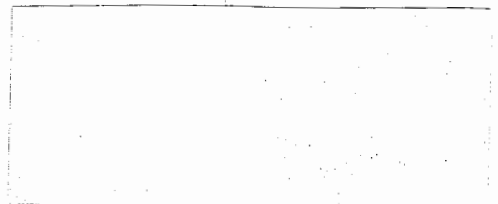
admitted fact that he was transferred from the place of posting to different places at different times. When he was transferred to a different place he occupied the Government quarter, but with prior permission of the competent authority. Therefore, his continuation to stay in the Government quarter can never be construed as an unauthorized occupation of the Government quarter. Therefore, the respondents would not be justified in imposing penal rentals on the petitioner. So far as the second issue is concerned, the law on the point is well settled, but the Tribunal has relied upon a circular said to have been issued by the State Government dated 31.01.92. A perusal of the said circular would only indicate that the Government has power to retain gratuity amount payable to an employee, but it does not speak of recovery of any arrears payable to the Government retired employee.

(7) In the instant case, resorting to the aforesaid circular, respondents have recovered the penal rentals from the gratuity payable to the petitioner. This, in our opinion, was impermissible. The Tribunal could not have misread the circular instructions issued by the State Government and held the same against the petitioner.

(8) In that view of the matter, both the issues we have framed for our consideration and decision require to be answered in favour of the applicant / petitioner. Therefore, we cannot sustain the order passed by the Tribunal. Accordingly the following:

ORDER

- (i) The petition is allowed.



(ii) The impugned order passed by the Tribunal in O.A. No.410/99 dated 7.6.2001 is set aside.

(iii) A direction is issued to the respondents to refund a sum of Rs.33,295/- to the petitioner as expeditiously as possible and also to pay interest @ 6% on the aforesaid amount from the date it was recovered till the date it is paid. Ordered accordingly.

**Sd/-
Chief Justice**

**Sd/-
V.K. Shrivatava
Judge**